IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

RCRev..No. 396 of 2006()

RCA.14/2003 of ADDL. DISTRICT & SESSIONS COURT, ADHOC-I, KOLLAM
RCP.3/2000 of MUNISFF/RENT CONTROLLER, KARUNAGAPPALLY
.....

REVISION PETITIONER/APPELLANT:

MUHAMMED KUNJU, S/O.IBRAHIMKUTTY,
SABEENA MANZIL, PADANAYARKULANGARA NORTH,
KARUNAGAPPALLY VILLAGE.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

JAMEELA, D/O.IBRAHIMKUTTY,
KALLEKALTHEKKATHIL VEEDU,
KANNAMPALLIBHAGAM MURI, KURIKADU VILLAGE,
KARTHIKAPPALLY TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & K.P.BALACHANDRAN,JJ.

R.C.R.NO.396 OF 2006

Dated this the 16th day of November, 2006

JUDGMENT

Balachandran,J.

Tenant is the revision petitioner. Eviction order was initially passed against him under Section 11(3) of Act 2 of 1965 in R.C.P.No.3/2000 on the file of the Rent Control Court, Karunagappally. Appeal filed therefrom was also dismissed. The dismissal was challenged in RCR.No.153/2005 before this Court. This Court confirmed the finding in respect of the bona fides of the claim advanced under Section 11(3) of the Act entered into by the authorities below but afforded an opportunity to the petitioner to establish his claim for protection under the 2nd proviso to Section 11(3) of the Act and

remanded the case to the Rent Control Appellate Authority for consideration of the same by that Authority after adducing evidence. The Rent Control Appellate Authority, Kollam considering also the additional evidence adduced after remand considered the claim of the petitioner on merits and found that the petitioner is not entitled to the benefit of 2nd proviso to Section 11(3) of the Act, as he has not established either the first limb or the second limb of the 2nd proviso to Section 11 (3) of the Act. Accordingly, revised order was passed for eviction under Section 11(3) of the Act in RCA.No.14/2003 confirming the order of eviction in RCP.No.3/2000. Petitioner challenges the said order before this Court.

2. It is worthy to note that the

petitioner had not taken steps to produce accounts of his business and establish that the income from the business conducted in the schedule shop room is his main source of livelihood. Despite the fact that he has examined several other witnesses to establish his contention that there is no other vacant room available in the locality for him to shift his business, the Appellate Authority has found on a proper discussion of the evidence adduced that he has not been able to establish that there are no other buildings available in the locality for him to shift his business. We do not find any irregularity, illegality or impropriety in the finding entered into and the order so passed by the Appellate Authority. It is worthy to note that the petitioner is not to succeed in his claim

for protection under the 2nd proviso, if he fails to establish either of the two limbs under the 2nd proviso. To establish the first limb of 2nd proviso absolutely no evidence is there and hence it is futile for him to contend that he is entitled to the benefit of 2nd proviso to Section 11(3) of the Act. This revision is hence devoid of merit and is dismissed.

3. Rent Control Petition is one filed as early as in 2000 and this is the second round that the petitioner is coming before this Court challenging the order of eviction. However, we grant the petitioner three months' time to surrender vacant possession of the schedule building to the respondent-landlord on condition that he shall file an unconditional undertaking before the execution

court positively within ten days from today, to vacate the schedule building positively on or before 15/2/2007, to clear off the arrears of rent, if any, and to continue to pay the monthly rents on the due dates itself without fail and not to induct any strangers into the schedule premises. In case of failure to comply with the above directions, the order of eviction shall become executable forthwith and he shall not be entitled to the benefit of three months' time to surrender vacant possession.

P.R.RAMAN,
Judge.

K.P.BALACHANDRAN,
Judge.

kcv.